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**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**HERITAGE AMENDMENT BILL 2019**

**REVISED EXPLANATORY STATEMENT**

**Presented by  
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## HERITAGE AMENDMENT BILL 2019

### Introduction

This explanatory statement relates to the Heritage Amendment Bill 2019 (the **Bill**) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

This explanatory statement must be read in conjunction with the Bill. It is not, and is not intended to be, a comprehensive description of the Bill. What is written about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

### Overview of the Bill

The *Heritage Act 2004* (the **Act**) is the primary legislation for the recognition and protection of heritage places and objects, including Aboriginal places and objects in the ACT.

A range of enforcement actions are available to respond to offences against the Act, including:

- strict liability offences;
- heritage directions made by the ACT Heritage Council (the **council**);
- heritage orders made by the Supreme Court; and
- prosecution for offences.

The purpose of the Bill is to make a range of amendments to strengthen the way damage to heritage places and objects can be dealt with to both deter people from doing damage in the first place and to make them responsible for repairing any damage to heritage places or objects

There are limitations in the use of heritage directions for the protection of heritage places and objects. Currently, heritage directions can only be issued for places at 'serious and imminent threat', which does not generally allow for 'repair' directions to be issued after damage to a heritage place has occurred, such as in the case of unapproved works.

Additionally, heritage directions are unable to be used for minor to moderate offences due to the threshold wording of 'serious'.

Due to the current limitations in the Act, there is no mechanism to ensure that any damage to a heritage or Aboriginal place or object is repaired.

As such, the current deterrent system in place for heritage offences is not as effective as it could be, which may result in the loss of community confidence in a robust heritage regulatory system.

## Summary of amendments to the Act

The Bill includes provisions that will allow:

- the council to issue a heritage direction under section 62, to be used where there is an imminent threat to the heritage significance of a place or object, removing the threshold wording of ‘serious’; and
- allow the council to issue a repair damage direction for damaged heritage places and objects, if they can be repaired:
  - The Bill creates an offence of contravening a repair damage direction, with a maximum penalty of 500 penalty units.
  - If the Territory has to carry out the requirements of a heritage direction, costs can be recovered from the person the direction was given to.
  - The giving of a repair damage direction and refusal by the council to give an extension of time to comply with a repair damage direction will be a reviewable decision in the ACT Civil and Administrative Tribunal.
  - The Bill also provides that, in line with current defined offence provisions relating to damage of a heritage place or object, the failure to comply with a repair damage direction can be grounds for the Supreme Court to make a heritage order.

## New offence

The Bill introduces a new provision to allow the council to issue a repair damage direction if a person causes unauthorised damage to a heritage place or object, including an Aboriginal place or object.

New section 67C creates an offence, with a maximum penalty of 500 penalty units, for failing to comply with a repair damage direction issued under new section 67A. However, section 67C (2) provides that an offence has not been committed if the person has a reasonable excuse.

Section 69 of the Act presently allows the Supreme Court to issue a heritage order if the respondent has contravened, is contravening or is likely to contravene a defined offence provision and an order is necessary to avoid material harm to the heritage significance of the place.

Section 69 (3) outlines defined offence provisions about which a heritage order may be issued by the Supreme Court, such as publishing restricted information without approval, contravention of a heritage direction, diminishing the heritage significance of a place or object, damaging an Aboriginal place or object or contravention of an information discovery order.

For consistency, section 69 (3) is amended to include the contravention of a repair damage direction as a defined offence wherein a heritage order may be issued by the Supreme Court.

Section 116 presently outlines criminal liability of executive officers and outlines the circumstances whereby an executive officer of a corporation commits a relevant offence.

Section 116 (6) defines the relevant offence provisions such as contravention of a heritage direction, diminishing the heritage significance of a place or object and damaging an Aboriginal place or object.

For consistency, this clause is amended to include a contravention of a repair damage direction as a relevant offence.

This is a regulatory Bill and owners, occupiers or a person undertaking work on a heritage place or object under a development approval under the *Planning and Development Act 2007* or council advice or approvals under the Heritage Act should be aware of their responsibilities and obligations in relation to the approval or permit.

Compliance with the provisions of the Bill is important to ensure the protection of the ACT's heritage assets for current and future generations. Once heritage places are lost, they – and all they represent – are permanently lost to future generations.

Justification for the newly created offence with a relatively high maximum penalty under new section 67C is provided in detail under the relevant clause.

### **Human rights implications**

The Bill engages the following rights contained in the *Human Rights Act 2004*:

- right to recognition and equality before the law (section 8); and
- right to privacy and reputation (section 12).

Section 28 (1) of the Human Rights Act provides that human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) then provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered. Section 28 (2) further provides 5 factors that must be considered when determining whether a limit on human rights is considered justified.

### **Right to recognition and equality before the law**

Sections 8 (2) and (3) of the Human Rights Act provide that:

- (2) Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.
- (3) Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

New section 67A introduces a provision to allow the council to issue a repair damage direction if a person causes unauthorised damage to a heritage place or object or Aboriginal place or object, if the damage can be repaired. The council may issue a repair damage direction to the owner or occupier of the place or an owner or custodian of the object, or a person whose work affects the place or object.

The right to equality before the law, protected by section 8 of the Human Rights Act has the potential to be engaged by new section 67A because not all individuals who may be given a repair damage direction may have the financial resources to carry out the directed repair works.

The right to equality before the law is further engaged by new sections 67C and 67D. New section 67C creates an offence of failing to comply with a repair damage direction, whereas new section 67D provides that an authorised person, with necessary assistance, may enter the premises that is the subject of a repair damage direction to enforce the direction. New section 67D (4) then provides that the reasonable costs incurred by the Territory in repairing damage at the premises is a debt owing to the Territory by the person to whom the direction was given. The right to equality is engaged by new section 67D (4) because not all individuals may have the financial resources to reimburse the Territory for carrying out repair works.

The limit that the Bill places on the right to equality before the law is considered reasonable and justifiable in a free and democratic society taking into account the factors enumerated in section 28 (2) of the Human Rights Act, specifically:

**(a) The nature of the right affected**

The right to equality before the law protected by section 8 of the Human Rights Act, is an important right because it allows people to enjoy their other human rights without discrimination of any kind. The right to equality before the law recognises that every person has the same rights and deserves the same level of respect and that no individual or group of individuals should be privileged or discriminated against by the government. The right to equality before the law ensures that public authorities, such as the council, do not enforce laws in a discriminatory way.

Section 8 further provides that everyone is entitled to equal protection of the law without discrimination, which refers to the equal enforcement and administration of the law.

Equality before the law does not necessarily mean each individual is treated in exactly the same way by government. As McHugh J explained in *Waters v Public Transport Corporation*, ‘discrimination can arise just as readily from an act which treats as equals those who are different as it can from an act which treats differently persons whose circumstances are not materially different’.<sup>1</sup>

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<sup>1</sup> (1992) 173 CLR 349, 402.

**(b) The importance of the purpose of the limitation**

The purpose of limiting the right to equality before the law through the introduction of a repair damage direction scheme is to provide better protection for heritage places and objects and Aboriginal places and objects.

Providing an additional compliance tool to the council in the form of repair damage directions is intended to have a deterrent effect on damage being done in the first place to places and objects of heritage significance. If a person knows that they will be forced to repair, or reimburse the Territory for any repairs to, any damage that they do to a heritage place or object, they will be less likely to undertake actions that may cause damage to them.

**(c) The nature and extent of the limitation**

The scheme to issue and enforce repair damage directions created by the Bill engages the right to equality before the law because some recipients of a repair damage direction may not have the financial resources to comply with the direction or to reimburse the Territory for repair works undertaken by an authorised person.

Safeguards to minimise the limitation on the right to equality before the law have been built into the Bill.

Section 46 of the *Legislation Act 2001* operates to provide the council with the power to amend or repeal a direction. In this context, the council has the power to revoke a repair damage direction if the recipient can demonstrate that they are under financial hardship.

Additionally, new section 67B allows the council to give an extension of time to comply with a repair damage direction upon application from the person who has been given the direction. An application for an extension must be in writing and state the reasons why the extension is required. In this context, financial hardship may be demonstrated by the applicant as a reason for an extension. A prescriptive list of reasons why an extension may be required is not defined in the Bill to ensure the council's discretion when making a decision is not limited.

The decisions by the council to issue a repair damage direction or to refuse to give an extension of time to comply with a direction are reviewable by the ACT Civil and Administrative Tribunal.

Under section 40B of the Human Rights Act, it is unlawful for the council, as a public authority, to act in a way that is incompatible with a human right or to fail to give proper consideration to a relevant human right in making a decision. The council must therefore consider the individual circumstances of any person to whom it intends to issue a repair damage direction, or who requests an extension of time to comply with a direction.

With regards to debt owing to the Territory following repairs to a heritage place or object done by an authorised person, an additional safeguard to minimise the limitation on the right to equality before the law can be found in section 131 of the *Financial Management Act 1996*, which permits the Treasurer to:

- waive the Territory's right to payment of an amount payable to the Territory;
- postpone any right of the Territory to be paid a debt in priority to another debt;
- allow the payment by instalments of an amount payable to the Territory; or
- defer the time for payment of an amount payable to the Territory.

**(d) The relationship between the limitation and its purpose**

The scheme to issue and enforce repair damage directions is designed to operate as a deterrent to damage occurring to heritage or Aboriginal places or objects in the first place. Many places and objects are heritage registered because they are rare, unique or excellent examples of a type or class of place or object. Once heritage places and objects are destroyed, they—and all they represent—are lost to future generations. The repair damage direction scheme is designed to provide a disincentive to damaging heritage places and objects and to send a strong message to the building and development community that disregard for the law should not be seen as a mere cost of doing business.

Those who are most likely to be issued a repair damage direction will be the owners, occupiers or custodians of heritage places or objects, although a direction can also be issued to a person whose work affects a place or object that has heritage significance. Owners, occupiers and custodians are expected to be aware of their duty to care for and maintain heritage places and objects under their control and to avoid causing damage to them. Limiting the right to equality before the law by introducing a repair damage direction scheme, including an offence of failing to comply with a direction provides an additional incentive for people to protect heritage places and objects—whether they have the financial means or not—to repair any damage they may cause to a place or object. The proposed repair damage direction scheme provides an additional protection for the ACT's irreplaceable places and objects of heritage significance.

**(e) Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.**

The proposed repair damage directions will act as an additional compliance tool for the council. Existing compliance tools to protect heritage in the ACT include heritage directions made under section 62 of the Act and the option of prosecuting a person for the offences of diminishing the heritage significance of a place or object (section 74) or damaging an Aboriginal place or object (section 75). Repair damage directions may only be issued if the damage can be repaired, and are designed as a softer compliance tool than prosecution.

As such, there are unlikely to be any less restrictive means reasonably available to achieve the purpose of compelling the repair of any damage caused to heritage or Aboriginal places and objects.

As noted above, the Bill has inserted safeguards to minimise the limitation that repair damage directions place on the right to equality before the law, including:

- permitting the recipient of a repair damage direction to apply to the council for an extension of time to comply with the direction;
- requiring the council to consider the reasons the applicant wants an extension of time; and
- providing that the decisions by the council to issue a repair damage direction or to refuse to give an extension of time to comply with a direction are reviewable.

### **Right to privacy and reputation**

Section 12 of the Human Rights Act provides that:

Everyone has the right—

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

The Bill engages the right to privacy and reputation in 2 ways:

- new section 67D provides that if a person subject to a repair damage direction fails to comply with the direction within the time stated in the direction (or the extended time), an authorised person may, with necessary assistance, enter the premises and repair the damage. This may include entering a person's home if it is heritage registered; and
- clause 5 of the Bill requires that a repair damage direction must be included in the public heritage register, which may affect a person's right to privacy and reputation by publishing the fact that they have had a repair damage direction issued to them.

The limit that the Bill places on the right to privacy and reputation is considered reasonable and justified in a free and democratic society, taking into account the factors enumerated in section 28 (2) of the Human Rights Act, specifically:

#### **(a) The nature of the right affected**

The right to privacy is in essence the right to live free from interference by government. Any limitation on the right to privacy covers 2 important aspects: it must be lawful, and it must not be arbitrary. This means that a search of a person's home that was otherwise lawful would still breach section 12 of the Human Rights Act if it was arbitrary; that is, if the search was unreasonable, unnecessary or the degree of interference was not proportionate to the need.

Section 12 also protects a person's reputation from unlawful attacks, which can be interpreted as attacks that are intentional and based on untrue allegations.

**(b) The importance of the purpose of the limitation**

The purpose of limiting the right to privacy and reputation through the Bill is to provide better protection for heritage places and objects and Aboriginal places and objects.

Allowing an authorised person, with necessary assistance, to enter premises belonging to another person in order to undertake repairs on damaged places and objects ensures the protection of the places or objects' heritage significance for future generations.

The requirement to notify a repair damage direction on the heritage register ensures that the complete history of a place or object's heritage registration is captured. Section 20 (4) of the Act already requires that the heritage register must include each heritage guideline, heritage direction, heritage agreement and enforcement order that applies to a heritage place or object. Providing a requirement to also include repair damage directions on the heritage register is consistent with the approach of section 20 (4) and gives the community the complete picture of a heritage place or object's history. Section 21 of the Act requires the council to give the public access to the heritage register.

**(c) The nature and extent of the limitation**

New section 67D permits an authorised person, with necessary assistance, to enter the premises where the place or object to which a repair damage direction applies is located in order to:

- do the thing stated in the direction;
- do or finish any work stated in the direction; or
- direct or supervise another person that the authorised person has asked to carry out a task.

An authorised person may only enter the premises that are the subject of a repair damage direction if the person subject to the direction fails to comply with the direction in the time stated in the direction or by any extension of time given by the council.

New section 67D limits the right to privacy and reputation by permitting an authorised person to interfere with a person's home to repair any damage to its heritage significance.

Safeguards to minimise the limitation on the right to privacy and reputation have been built into new section 67D, including that an authorised person may only enter the premises between 8am and 6pm, or at any reasonable time with the occupier's consent; entry is only permitted to carry out the task set out in the repair damage direction and until the task is complete, and at least 7 days' written notice must be given. New section 67D (6) provides the contents of this notice, including:

- a statement about the operation of new section 67D;
- the purpose and nature of the proposed action;
- the parts of the place likely to be affected;
- the time or times when the action is proposed to be taken; and

- a statement about the obligations of the authorised person and the Territory.

Clause 5 of the Bill requires a repair damage direction to be notified on the heritage register. Public notification of the fact that a person has been issued with a repair damage direction limits the right to privacy and may also limit the right to reputation of the person subject to the direction.

It should be noted that the requirement to publicly notify the issue of a repair damage direction may also work to enhance the right to freedom of expression found in section 16 (2) of the Human Rights Act, which includes the freedom to seek and receive information from government. Including information on the heritage register positively contributes both to the right to freedom of expression and to the transparency of government operations.

**(d) The relationship between the limitation and its purpose**

Allowing an authorised person, with necessary assistance, to enter premises belonging to another person in order to undertake repairs on a damaged place or object ensures the protection of the place or object’s heritage significance for future generations. New section 67D also has a deterrent effect: if a person knows that an authorised person can enter their premises to repair any damage to a heritage place or object, they may be less likely to cause damage to them.

The requirement in clause 5 of the Bill to notify a repair damage direction on the heritage register ensures that the complete history of a place or object’s heritage registration is captured in a form that is easily accessible to members of the public.

**(e) Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.**

There are unlikely to be any less restrictive means reasonably available to achieve the Bill’s purpose that the limitation on the right to privacy and reputation seeks to achieve.

Under new section 67D (1), an authorised person may only enter premises to undertake repairs if the person subject to a repair damage direction fails to comply with the direction. In cases where a person fails to comply with a repair damage direction, there is no other less restrictive means reasonably available except to authorise the Territory to conduct the repairs, in order to achieve the purpose of preserving the heritage significance of a place or object.

As described above, safeguards have been drafted into new section 67D to minimise the limitation on the right to privacy and reputation.

There is similarly unlikely to be any less restrictive means reasonably available to achieve the purpose of providing a complete history of a place or object’s heritage significance other than including all of the relevant

information on a public register, including that the place or object has been the subject of a repair damage direction.

## CLAUSE NOTES

### **Clause 1 Name of Act**

This clause names the Act as the *Heritage Amendment Act 2019*.

### **Clause 2 Commencement**

This clause provides for the commencement of the Act on the day after its notification day.

### **Clause 3 Legislation amended**

This clause provides that the Act amends the *Heritage Act 2004*.

### **Clause 4 Meaning of *interested person* New section 13 (2) (da) and (db)**

Section 13 of the Act provides a definition of the term *interested person* in the context of notification of a decision, and for the purposes of reviewable decisions.

This clause provides new interested people in relation to new provisions under section 67A whereby the council may issue a repair damage direction if a person causes unauthorised damage to a heritage place or object, including an Aboriginal place or object.

The new interested people in relation to the giving of a repair damage direction or an extension of a repair damage direction include the person to whom the direction is given, the person who applied for the extension and the owner of the heritage place or object.

### **Clause 5 Establishment of heritage register New section 20 (4) (ba)**

Section 20 of the Act establishes that the council must keep a register of heritage places and objects.

Sections 20 (3) and (4) detail the information which is required to be held in the ACT heritage register for each place or object including details of the place or object, each heritage guideline, heritage direction, heritage agreement and each enforcement order.

New section 20 (4) (ba) provides that each repair damage direction must also be included on the heritage register.

### **Clause 6 Application of heritage guidelines New section 27 (2) (ba)**

Part 5 of the Act establishes that the council may make heritage guidelines to conserve the heritage significance of a place or object and the process in which heritage guidelines must be made.

Section 27 of the Act provides that the conservation of a place or object must be exercised in accordance with any applicable heritage guidelines.

This clause provides that the application of heritage guidelines includes the giving of a repair damage direction.

**Clause 7 Heritage direction by council  
Section 62 (3) (a)**

This clause amends section 62 (3) (a) of the Act.

Section 62 of the Act allows the council to issue a heritage direction.

Section 62 (3) (a) provides that a heritage direction may be given only if the council is satisfied on reasonable grounds that immediate protection of the place or object is justified because a *serious and imminent* threat exists that would harmfully affect the heritage significance of a place or object, or an Aboriginal place or object.

This clause amends section 62 (3) (a) to remove the threshold wording 'serious' to allow the council to issue a heritage direction where there is merely an imminent threat to the heritage significance of a place or object.

**Clause 8 Extension of heritage direction  
Section 64 (1) (a)**

This clause amends section 64 (1) (a) of the Act.

Section 64 outlines provisions to extend the period for which a heritage direction is in force.

The Bill amends section 64 (1) (a) to be consistent with the amendments made by clause 7 to section 62 (3) (a), as outlined above.

**Clause 9 New part 11A**

This clause inserts new part 11A into the Act. New part 11A is concerned with repair damage directions that can be issued by the council. The scheme created by new part 11A is outlined below.

**67A Repair damage direction by council**

New section 67A introduces a provision to allow the council to issue a repair damage direction if a person causes unauthorised damage to a heritage place or object, or Aboriginal place or object, if the damage can be repaired.

In this context, 'unauthorised damage' means damage that is not caused by conduct in accordance with a heritage guideline, a heritage direction, a heritage agreement, an approved conservation management plan, a development approval under the *Planning and Development Act 2007*, an excavation permit or an approved statement of heritage effect.

The council may issue a repair damage direction to the owner or occupier of the place or an owner or custodian of the object, or a person whose work affects the place or object.

A repair damage direction must be in writing and state the place or object to which it applies, the damage to be repaired and when the direction must be complied with.

A repair damage direction is a reviewable decision in the ACT Civil and Administrative Tribunal (see amendments to schedule 1 made by clause 14).

### **67B Extension of repair damage direction**

New section 67B allows the council to give an extension of time to comply with a repair damage direction upon application from the person who has been given the direction.

The application for an extension must be in writing and state the reasons why the extension is required.

Acceptable reasons why an extension is required is not defined in the Bill to ensure the decision-maker's discretion is not limited however, the reasons must be one that an ordinary member of the community would accept as reasonable in the circumstances.

In making its decision, the council must consider the reasons why an extension is required as outlined in the application for an extension of repair damage direction. Factors the council may take into account may include serious or life-threatening injury or illness of the applicant or someone for whom they have caring responsibilities, disabilities the person may have, family emergency/bereavement, planned or unplanned travel, financial hardship, unavailability of a suitable or qualified tradesperson to undertake the work.

A decision by the council to refuse to give an extension of time to comply with a repair damage direction is a reviewable decision (see amendments to schedule 1 made by clause 14).

### **67C Offence—fail to comply with repair damage direction**

This clause creates an offence with a maximum penalty of 500 penalty units for failing to comply with a repair damage direction issued under new section 67A.

However, section 67C (2) outlines that an offence has not been committed if the person has a reasonable excuse. The meaning of the term **reasonable** excuse is not defined in legislation, but the excuse must be one that an ordinary member of the community would accept as reasonable in the circumstances.

Many places and objects are heritage registered because they are rare, unique or excellent examples of a type or class of place or object. As previously stated, once heritage places are lost, they—and all they represent—are permanently lost to future generations.

Failure to comply with a repair damage direction is significant, due to the risk of further damage or deterioration to the place or object that is the subject of the direction.

However, contravention of a repair damage direction is not considered as serious as contravening a heritage direction (issued prior to the damage occurring) due to the fact that once the damage has occurred a degree of integrity will be lost. The maximum penalty for the offence of failing to comply with a repair damage direction has therefore been set at 500 penalty units, significantly less than the maximum penalty for the current offence of failing to comply with a heritage direction, which is 1000 penalty units.

High penalties are necessary in a heritage context to:

- ensure genuine disincentive is provided to protect these, often, rare and unique places and objects; and
- send a strong message to the building and development community that disregard for the Heritage Act should not be seen as a mere cost of doing business.

If penalties for heritage offences are set too low, the cost of penalties to be paid may in some cases simply be viewed as the effective cost of redeveloping a site to its maximum potential to achieve a desired development outcome, potentially resulting in significant commercial advantage.

As such, penalties for damage to heritage places and objects and Aboriginal places and objects must be significant enough to deter such thinking to protect these important places and objects.

A clear message must be set that wilful and illegal destruction of our heritage will not be tolerated. The ACT Government plays a critical and public role in safeguarding the ACT's heritage assets for current and future generations. It is important that the Government leads by example in the way it cares for, maintains and protects these assets. This includes robust, efficient and effective regulatory and compliance legislation.

### **67D Repair of damage by Territory**

New section 67D applies if a person subject to a repair damage direction fails to comply with the direction within the time stated in the direction or the extended time, if an extension was granted by the council. The Territory may, with necessary assistance, enter the premises and repair the damage, and recover the reasonable costs of repairing the damage as a debt owed to the Territory by the person.

New section 67D (3) provides that authorised person may only enter the premises between 8am and 6pm; or at any reasonable time with the occupier's consent. The authorised person may only enter the premises to carry out the task and may only remain at the premises until the task is complete.

Section 67D (5) and (6) also provides that the council must at least 7 days before the proposed action is to begin endeavour to give each interested person for a place or object written notice of the action proposed under subsection (2), and what the notice must include.

New section 67D (7) provides that sections 97 and 98 of the Act apply to any action taken if the Territory repairs the damage, meaning that any damage caused by the Territory's actions must be minimised and compensation for the exercise of enforcement powers may be due.

**Clause 10 Heritage order**  
**Section 69 (3) (ba)**

Section 69 of the Act allows the Supreme Court to issue a heritage order if the respondent has contravened, is contravening or is likely to contravene a defined offence provision and an order is necessary to avoid material harm to the heritage significance of a place or object.

Section 69 (3) outlines defined offence provisions about which a heritage order may be issued by the Supreme Court, particularly publishing restricted information without approval, contravention of a heritage direction, diminishing the heritage significance of a place or object, damaging an Aboriginal place or object or contravention of an information discovery order.

This clause amends section 69 (3) to include the contravention of a repair damage direction as a defined offence about which the Supreme Court may issue a heritage order.

**Clause 11 Exceptions to part 13 offences**  
**New section 76 (2) (a) (ia)**

Part 13 of the Act creates heritage offences.

Section 76 includes exceptions to part 13 offences so that it is not an offence to diminish the heritage significant of a place or object or damage an Aboriginal place or object if a person is engaging in conduct in accordance with:

- a heritage guideline;
- a heritage direction;
- a heritage agreement;
- a conservation management plan;
- a development approval under the *Planning and Development Act 2007*;
- an excavation permit; or
- a statement of heritage effect approved by the council.

This clause amends section 76 (2) to include that heritage offences do not apply to a person who is engaging in conduct in accordance with a repair damage direction.

**Clause 12 Power to enter premises**  
**New section 80 (1) (b) (ii)**

Division 14.3 of the Act outlines the powers of authorised people under the Act.

Section 80 sets out the circumstances under which authorised people may exercise the power to enter premises, such as for issuing a heritage direction.

This clause amends section 80 (1) (b) (ii) to provide that an authorised person may enter premises to give a repair damage direction to an owner, occupier, or the person to whom the direction is given.

**Clause 13 Criminal liability of executive officers**  
**Section 116 (6), definition of *relevant offence*, new paragraph (aa)**

Section 116 of the Act provides for the criminal liability of executive officers and outlines the circumstances under which an executive officer of a corporation commits a relevant offence.

Section 116 (6) provides definitions for section 116.

This clause amends section 116 (6) to include contravention of a repair damage direction as a ***relevant offence*** for which executive officers will have criminal liability.

**Clause 14 Reviewable decisions**  
**Schedule 1, new items 5A and 5B**

Schedule 1 of the Act outlines the reviewable decisions made under the Act.

This clause amends schedule 1 to include the following as reviewable decisions:

- the decision to give a repair damage direction; and
- the decision to refuse to give an extension of time to comply with a repair damage direction.

**Clause 15 Dictionary, new definition of *repair damage direction***

This clause inserts a new signpost definition of the term ***repair damage direction*** into the dictionary.